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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,561	09/09/2003	John Liccione	1744-703USPT	3308
58687 7590 03/25/2008 DUBOIS, BRYANT, CAMPBELL & SCHWARTZ, LLP 700 LAVACA STREET SUITE 1300 AUSTIN, TX 78701				
EXAMINER				
CONTINO, PAUL F				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,561

Applicant(s)

LICCIONE ET AL.

Examiner

PAUL F. CONTINO

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 17, 19 and 23-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 17 and 19 is/are allowed.
6) ☒ Claim(s) 11 and 23-25 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 9 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION: Final Rejection

Response to Arguments

1. Applicant's arguments filed January 7, 2008, with respect to claim 11 on pages 7-10 of the Remarks have been fully considered but they are not persuasive.

The Examiner respectfully disagrees with the Applicant's arguments regarding failure of the Cramer et al. reference to disclose failover/switchover of an application. Column 5 lines 33-45 column 7 lines 35-44 of Cramer et al. discloses a filer application that is failed over from a primary to a secondary filer. The "application" is the servicing of client requests and data retrieval, further making Cramer et al. analogous art.

The Examiner respectfully disagrees with the Applicant's arguments regarding failure of the Cramer et al. reference to disclose switch-back in a single action. Column 7 lines 66-67 "giveback command" is a single action performed by the user.

2. Applicant's arguments with respect to claims 17, 19, and 23-25 have been fully considered and are persuasive. The 35 USC 103(a) rejections of claims 17, 19, and 23-25 have been withdrawn.

Claim Objections

3. Claim 11 is objected to because of the following informalities: line 9 states "a perform a". Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 23-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 23-25 are not limited to one of the four statutory categories of inventions. In view of Applicant's disclosure, Specification page 34, lines 15-17, the system is not limited to statutory embodiments, instead being defined as including both nonspecific statutory embodiments (e.g. hard disk drive) and non-statutory embodiments (e.g. signals). As such, the claims are not limited to patentable subject matter and is/are therefor non-statutory. The Examiner recommends the Applicant amend "computer usable medium" to read "computer usable storage medium" as defined in the Applicant's Specification on page 33 in order to overcome this rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer et al. (U.S. Patent No. 6,920,579) in view of Wang et al. (U.S. Patent No. 6,587,970), further in view of Cowan et al. (U.S. Patent No. 6,115,743).

As in claim 11, Cramer et al. teaches of an application monitoring and disaster recovery system, comprising:

a primary computing environment, including a primary server executing an application (Fig. 1 #150);

a secondary computing environment, including a secondary server capable of executing said application (Fig. 1 #150);

a graphical user interface, in communications with said monitoring and management server module, capable of allowing a user to [[a]] perform a failure switch-over from said primary computing environment to said secondary computing environment for said application in a single action, and wherein said graphical user interface is further capable of allowing a user to perform a switch-back from said secondary computing environment to said primary

computing environment for said application in a single action (*Fig. 1 #152 and Fig. 4 #402; column 5 lines 15-29 and column 8 lines 6-10, switch-over single action "please takeover"; column 7 line 66 through column 8 line 2, switch-back single action "giveback command"*);

whereby said system allows for disaster recovery and fault tolerance, and limits computing down-time experienced by end-users of said primary computing environment (*column 2 lines 59-64 and column 4 lines 24-26*).

However, Cramer et al. fails to teach of a management server and the single action being a button click. Wang et al. teaches of a management server, executing a monitoring and management server module, that is in communications with said primary server and said secondary server (*Fig. 1 #160; column 7 lines 3-17*). Cramer et al. teaches of a single action being a button click by the user on a graphical user interface (*Figs. 13-17; column 10 lines 54-64, where a single click on the GUI button menu allows for execution of a management function*).

It would have been obvious to a person skilled in the art at the time the invention was made to have included the management server as taught by Wang et al. in the invention of Cramer et al. This would have been obvious because the use of a management server offers a cost and resource efficient means of reliably operating a computer system (*column 1 line 65 through column 2 line 16*).

It would have been obvious to a person skilled in the art at the time the invention was made to have included the button click as taught by Cowan et al. in the combined invention of Cramer et al. and Wang et al. This would have been obvious because using a single button click to control an operation in a computer system, which is well known in the art, as taught by Cowan

et al. offers an easy, resource efficient, and cost effective means of managing a computer system (column 1 lines 44-63).

Allowable Subject Matter

6. Claims 17 and 19 are allowed.
7. The following is a statement of reasons for the indication of allowable subject matter:

As in claim 17, the inclusion of the monitoring and display of a plurality of states of an application, including the switch-over of the application via a single user button click, when read within the remainder of the claim, makes claim 17 allowable over the prior art.

As in claim 19, the inclusion of the monitoring of a metric related to an application, display of states rendered by the metric, switch-over of the application, and switch-back of the application in response to a button click by a user, when read within the remainder of the limitations of the claim, makes claim 19 allowable over the prior art.

As in claim 23, the inclusion of the limitations involving the monitoring and display of states of an application, and the switch-over of the application itself, when read within the remainder of the claims, would make claim 23 and dependent claims 24 and 25 allowable over the prior art if the applied 35 USC 101 rejection were to be overcome.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

9. Applicant's amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL F. CONTINO whose telephone number is (571) 272-3657. The examiner can normally be reached on Monday-Friday 9:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott T Baderman/
Supervisory Patent Examiner, Art Unit
2114

PFC
3/12/2008